

The Hon. Tana Lin

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBBY LEE ROBINSON,

Defendant.

CASE NO. CR22-212TL

GOVERNMENT'S NOTICE RE
CONTENT OF OPENING
STATEMENT

The government is providing this notice in advance of the commencement of trial to the Court and counsel concerning the proposed scope of its opening statement. Specifically, the government intends to discuss facts relating to the alleged justification defense in its opening statement, doing so in a way that does not presuppose, or comment on, whether the defendant will testify.

As the Court is aware, in response to the government's motion to preclude justification defense (Dkt. 39), the defendant – through his attorney – made a proffer as to the alleged facts justifying his possession of firearms (Dkt. 50). The Court denied the government's motion and allowed the defendant to pursue this defense (Dkt. 86). The defendant has listed himself and his wife as witnesses at trial and they will presumably testify in accordance with the proffer made by defense counsel. Thus, the defendant has placed the justification defense squarely at issue in this case.

1 The government has reached out to defense counsel and inquired whether, “In light of
2 Judge Lin’s order denying the government’s motion to preclude the justification defense, do
3 you have any objection to the government discussing this defense during its opening
4 statement?” Defense counsel replied that: “The defense would object to any opening
5 statement references by the prosecution to anticipated defense evidence, which may or may
6 not be put on. Mr. Robinson has instructed me to wait until after the prosecution’s opening
7 statement to determine whether or not he will proceed with a justification defense or some
8 other one.”

9 It is the government’s position that – so long as it does not comment on the
10 defendant’s right to testify – it should be free to discuss facts related to the justification
11 defense and to flag for the jury why it is doing so. Accordingly, the government proposes to
12 make a statement along the following lines during opening: “The government believes that
13 the evidence presented at trial will demonstrate that the defendant’s possession of firearms
14 on November 8, 2022, was not justified by the need to defend himself or for any other
15 reason.” The government will then discuss facts relevant to this issue without discussing
16 whether Robinson might or might not testify and without speculation as to what Robinson
17 might say if he testified. That is, the government will not discuss statements made in the
18 proffer that are not independently supported by evidence outside the proffer.

19 Any other approach would allow the defense to sandbag the government (by
20 precluding the government from discussing a defense that the defendant has told the Court it
21 intends to pursue) and will lead to confusion as the case is presented to the jury (as the
22 government will be eliciting testimony from witnesses that directly relates to this defense).

23 //

24 //

25 //

1 The government is making its position known in advance of trial so the defense may
2 assert any objection, and the Court may rule upon this issue prior to opening statement to
3 avoid having to litigate this question in the presence of the jury.

4 Respectfully dated this 25th day of September, 2023.

5
6 Respectfully submitted,

7 TESSA M. GORMAN
8 Acting United States Attorney

9
10 /s/ Stephen Hobbs
11 STEPHEN HOBBS
12 RACHEL YEMINI
13 Assistant United States Attorneys
14 United States Attorney's Office
15 700 Stewart Street, Suite 5220
16 Seattle, Washington 98101-3903
17
18
19
20
21
22
23
24
25
26
27
28